

(Legislative Supplement No. 36)

LEGAL NOTICE NO. 126

THE ANTI-COUNTERFEIT REGULATIONS, 2010

ARRANGEMENT OF REGULATIONS

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- 2—Interpretation.
- 3—Powers of the Board.
- 4—Term of office of Executive Director
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SCHEDULES

First Schedule—Forms

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THE ANTI-COUNTERFEIT ACT

(No. 13 of 2008)

IN EXERCISE of the powers conferred by section 37 of the Anti-Counterfeit Act, 2008, the Minister for Industrialization makes the following Regulations:—

THE ANTI-COUNTERFEIT REGULATIONS, 2010

1. These Regulations may be cited as the Anti-Counterfeit Regulations, 2010. Citation.
2. In these Regulations, unless the context otherwise requires — Interpretation.
 - “Act” means the Anti-Counterfeit Act, 2008; No.13 of 2008.
 - “agent” means a person duly appointed to act on behalf of an intellectual property right owner, and includes a licensee;
 - “application” means an application made to the Executive Director in respect of any seized goods or to the Commissioner in respect of suspect counterfeit goods under the Act;
 - “approved laboratory” means a testing or analysis facility approved by the Board and published by the Minister in the Gazette;
 - “batch” means the total number of identical items seized by an inspector under the Act;
 - “Board” means the Board of the Agency established under section 6 of the Act;
 - “certificate of authority” means a certificate issued by the Board to an inspector under section 22 of the Act;
 - “copies” means certified copies of statements or any documentary evidence issued under the Act or these Regulations;
 - “Executive Director” means the Executive Director of the Agency appointed under section 10 of the Act;
 - “inventory” means a record of goods seized by an inspector under the Act; and
 - “registration certificate” means a certificate relating to protection of intellectual property rights issued under any written law.
3. The Board shall be responsible to the Minister for all its powers, duties and functions under the Act. Powers of the Board.
4. The Executive Director shall hold office for a period of three years, and shall be eligible for re-appointment for one further term. Term of office of the Executive Director.

5. (1) The Board shall issue a Certificate of Authority in Form ACA 1 set out in the First Schedule, to an inspector appointed under section 22 of the Act. Appointment of inspectors.
- (2) An inspector shall, during the performance of his duties, produce the Certificate of Authority for the purpose of identification.
6. (1) A designated inspector under section 22(3) of the Act shall operate under the instruction and direction of his respective institution. Designated inspectors.
- (2) The institutions under which the designated inspectors operate, shall report to the Agency, concerning all matters relating to counterfeit goods, on a monthly basis.
7. (1) An inspector may in the performance of his duties require a person, dealing in goods which are suspected to be counterfeit goods, to provide sufficient labour for the proper and expeditious handling of goods or any tools under the Act. Powers of inspectors.
- (2) Where a person, dealing in goods which are suspected to be counterfeit goods suspect goods fails to provide sufficient labour for the proper and expeditious handling of the goods or any tools, the inspector may hire such labour as is reasonably necessary at the expense of that person.
8. (1) An inspector shall record any goods or tools seized in accordance with the Act, in Form ACA 2 set out in the First Schedule. Inventory of seized goods.
- (2) Where a person from whom goods have been seized declines to sign the Form referred to in sub-rule (1) as required, the inspector shall make a note to that effect on the form.
9. (1) A complainant wishing to obtain copies of a statement or documentary evidence procured by an inspector under section 26(1) of the Act, shall apply to the Executive Director in Form ACA 3 set out in the First Schedule. Application for copies of statements.
- (2) An application under paragraph (1) shall be accompanied by-
- (a) documentary proof that the applicant is the complainant;
 - (b) an affidavit stating that the copies obtained shall be used for only the purpose indicated on the application form; and
 - (c) the fee specified in the Second Schedule.
10. (1) A person wishing to inspect, goods seized under section 27 (2) of the Act, shall apply to the Executive Director in Form ACA 4 set out in the First Schedule. Application for inspection of seized goods.
- (2) The application under paragraph (1) shall be accompanied by the fee specified in the Second Schedule.
11. (1) A person who wishes to obtain samples of goods seized for testing or analysis under section 27 (3) of the Act, shall apply in Form ACA 5 set out in the First Schedule. Application for samples.
- (2) The application under paragraph (1) shall be accompanied by the fee specified in the Second Schedule.

12. (1) For the purpose of obtaining a sample from goods seized under section 27(4) of the Act, an inspector shall select the sample from the batch of the goods seized.

Taking of samples by an inspector.

(2) An inspector shall select a sample of the goods seized and make a record of the sample taken in Form ACA 6 set out in the First Schedule.

(3) The sample obtained under this regulation may be submitted to an approved laboratory for testing or analysis in Form ACA 7 set out in the First Schedule.

13. (1) An intellectual property right owner or his agent who wishes to lay a complaint to the Executive Director under section 33(2) of the Act shall lay a complaint in Form ACA 8 set out in the First Schedule.

Laying a complaint.

(2) The complaint under paragraph (1) of this regulation shall be accompanied by—

- (a) the fee specified in the Second Schedule;
- (b) an affidavit sworn by the complainant or his agent attaching the registration certificate and or any other relevant document in support of the complaint; and
- (c) an indemnity in Form ACA 9 set out in the First Schedule, signed by the complainant indemnifying the Agency from any claim for wrongful seizure, removal or detention of alleged counterfeit goods.

14. (1) An intellectual property right owner (or his agent) who wishes, to have suspected counterfeit goods seized by the Commissioner, under section 34(1) shall apply in Form ACA 10 set out in the First Schedule.

Application to the Commissioner to seize suspect goods.

(2) The application under paragraph (1) shall be accompanied by—

- (a) the fee specified in the Second Schedule.
- (b) an affidavit sworn by the complainant attaching the registration certificate or any other relevant document in support of the application; and
- (c) an indemnity in the Form ACA 11 set out in the First Schedule signed by the complainant indemnifying the Customs Authority from any claim made for any wrongful seizure, removal or detention of alleged counterfeit goods.

15. (1) An intellectual property right owner or his agent may submit particulars of the intellectual property right to the Agency in Form ACA 12 set out in the First Schedule.

Submission of particulars.

(2) The Executive Director shall maintain a database of all the particulars submitted under this regulation.

(3) A person wishing to make a search on the database maintained under this regulation shall apply in Form ACA 13 set out in the First Schedule and pay the fee specified in the Second Schedule.

16. (1) Where the goods seized under the Act are required to be returned to the owner, an inspector shall release the goods after completing Form ACA 14 of the First Schedule and any goods used for testing or analysis shall be recorded. Disposal of seized goods.
- (2) Where the goods seized under the Act are perishable, the inspector shall apply to a magistrate for an order of disposal.
- (3) Any goods forfeited under section 28(2) of the Act shall be destroyed or disposed of in such manner as the Executive Director may determine.
- (4) The Executive Director shall ensure that the disposal under this regulation shall not adversely affect the owner of the intellectual property right or a licensee.
17. A person who— False declarations.
- (a) with intent to deceive or mislead, gives any false information in relation to any application made to the Agency or Commissioner; or
- (b) removes, adds to, alters, defaces, or renders illegible any information on any Form prescribed under these Regulations in relation to any goods or tools.
- commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding six months, or a fine not exceeding six thousand shillings, or both.
18. The owner of an intellectual property right may appoint an agent to act on his behalf by completing Form ACA 15 of the First Schedule upon payment of the fee specified in the Second Schedule. Appointment of an Agent.
19. (1) The forms prescribed in the First Schedule to these Regulations shall with such modifications as may be necessary, be used for the purpose indicated therein. Forms.
- (2) Notwithstanding the provision of these Regulations, a document which deviates from the prescribed form shall not be void by reason of the deviation which does not affect the substance of the document, unless it is calculated to mislead or deceive in which case regulation 17 shall apply.
20. The owner of suspected counterfeit goods who continues to deal or trade in goods of similar description, commits an offence and is liable upon conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding six thousand shillings, or both. Offence.
21. (1) The Executive Director may exercise his discretion on any application made under these Regulations. Discretion
- (2) Any person who is aggrieved by any decision of the Executive Director may appeal to the Minister.
22. The Minister shall publish a list of approved laboratories for the purpose of testing or analyzing goods seized under the Act. Approved laboratories.
23. (1) The Executive Director shall maintain registers of all complaints received and prosecutions instituted under the Act. Register.
- (2) A person wishing to search the register maintained under paragraph (1) shall apply in Form ACA 13 set out in the First Schedule and pay the fee specified in the Second Schedule.

FIRST SCHEDULE

FORM ACA 1

(r.5 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

Certificate No.

CERTIFICATE OF AUTHORITY

Passport Size
Photograph

1.	Name of Inspector	
2.	I/D Number	
3.	Designation	
4.	Signature of holder	

I certify that the person whose particulars are herein indicated has been appointed an inspector under section 22 of the Anti-Counterfeit Act, 2008.

Issued and sealed on thisday of, 20.....

Signature

EXECUTIVE DIRECTOR

This Certificate is the property of The Anti-Counterfeit Agency. In case it is lost and found, the same should be returned to The Anti-Counterfeit Agency, Telposta Towers, 23rd Floor P.O. Box 30418-00100 Nairobi, or surrendered to the nearest Police Station.

FORM ACA 2

(r. 8 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

INVENTORY OF SEIZED GOODS

1.	Name of the owner/agent of the seized goods	
2.	Telephone number, postal and physical address	
3.	Description of goods	
4.	Quantity of goods	
5.	Place of seizure (physical address)	

6.	Date and time of seizure	
7.	Full particulars of the inspector seizing the goods	
8.	Remarks	

Dated thisday of..... 20.....

Signature

INSPECTOR

Signature

OWNER/AGENT

Name

Signature

WITNESS

Received by:

Name

Signature..... Date:.....

DEPOT MANAGER

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This form should be completed in quadruplicate. One copy to be issued to the owner/agent of the suspected goods, one copy to be delivered to the counterfeit goods depot, one copy to be filed in the investigation file by the inspector and one copy to be filed in the relevant file.

FORM ACA 3

(r. 9 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

APPLICATION FOR COPIES OF STATEMENTS

The Executive Director,

The Anti-Counterfeit Agency

1.	Name of the owner or agent	
2.	Telephone number, postal and physical address	
3.	Reference number of the complaint under section 33	
4.	Reason(s) for seeking copies	
5.	Remarks	

Dated this..... day of 20.....

Signature.....

OWNER/AGENT

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

.....
EXECUTIVE DIRECTOR

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form should be completed in duplicate. Upon approval of the application, a copy will be given to the applicant together with a copy of the statements, the original to be filed in the relevant file.
3. This application shall be accompanied by documentary proof that the applicant is the complainant and an affidavit in compliance with regulation 9 (2).

FORM ACA

THE ANTI-COUNTERFEIT ACT, 2008

4 (r. 10 (1))

The Anti-Counterfeit Agency

APPLICATION FOR INSPECTION OF SEIZED GOODS

The Executive Director,

The Anti-Counterfeit Agency

1.	Name of the complainant/ prospective complainant/suspect/ any other interested person	
2.	Telephone number, postal and physical address	
3.	Reference number of the matter	
4.	Description of goods	
5.	Quantity of goods	
6.	Place of seizure (physical address)	
7.	Reason for inspection	
8.	Remarks	

Dated this day of, 20.....

Signature.....

APPLICANT

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED.

.....
EXECUTIVE DIRECTOR

Inspection carried out by the applicant on this day of, 20.....

.....
DEPOT MANAGER

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in quadruplicate. One copy to be retained by the Director, one copy to be given to the applicant, two copies to be given to the Depot Manager, who will return one of the copies to the Director after inspection of the goods.

FORM ACA 5

(r. 11 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

APPLICATION FOR SAMPLES

1.	Name of applicant			
2.	Telephone number, postal and physical address			
3.	Reference number of the matter			
4.	Description of goods			
5.	Reason for sampling			
6.	Sample size			
7.	Indicate type of testing/ analysis	Destructive		Non Destructive
8.	Remarks			

Dated this..... day of, 20.....

Signature.....

APPLICANT

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

.....
EXECUTIVE DIRECTOR

Sample taken by the applicant on this day of, 20.....

.....
DEPOT MANAGER

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in quadruplicate. One copy to be retained by the Executive Director, one copy to be given to the applicant, two copies to be given to the Depot Manager, who will return one of the copies to the Executive Director after inspection of the goods.

FORM ACA 6

(r.12 (2))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

SAMPLES FOR TESTING/ ANALYSIS

1.	Full particulars of the inspector			
2.	Reference Number of the matter			
3.	Quantity of the goods			
4.	Description of the goods			
5.	Sample size			
6.	Indicate type of testing/ analysis	Destructive		Non Destructive
7.	Remarks			

Dated this..... day of, 20.....

Signature.....

INSPECTOR

Released by:

Name

Signature..... Date:

DEPOT MANAGER

NOTES:

- 1 If space provided is not sufficient, please use a separate sheet of paper.
- 2 This Form shall be completed in triplicate. One copy to be retained by the inspector, one copy to be filed in the relevant file and one copy to be retained by the Depot Manager.

FORM ACA 7

(r. 12 (3))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

SUBMISSION OF SAMPLES FOR TESTING/ ANALYSIS

To.....

1.	Full particulars of the inspector	
2.	Reference Number of the matter	
3.	Quantity of the goods	
4.	Description of the goods	
5.	Remarks	

Dated this..... day of, 20.....

Signature.....

INSPECTOR

Received by:

Name

Signature..... Date:

(Official stamp)

Note.—This Form shall be completed in triplicate. One copy to be retained by the inspector, one copy to be filed in the relevant file and one copy to be submitted with the sample to the testing or analysis laboratory.

Ref. No.....

FORM ACA 8

(r. 13 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

LAYING A COMPLAINT

The Executive Director,

The Anti-Counterfeit Agency

1.	Name of the owner of intellectual property	
2.	Telephone number, postal and physical address of owner	
3.	Name of agent, if any	
4.	Telephone number, postal and physical address of agent	
5.	Description of suspected counterfeit goods	
6.	Place where the goods are situated or intended destination	
7.	Particulars of the consignment or packages	
8.	The means of transport where applicable	
9.	The identity of the importer, exporter, holder, distributor or manufacturer.	

10.	Place where goods are produced, if known	
11.	Means of production where applicable	
12.	Nature of complaint	
13.	Description of the genuine goods or copyrighted works	
14.	Samples of the genuine products or copyrighted works	

Dated this day of, 20.....

Signature.....

COMPLAINANT/AGENT

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in triplicate.
3. This application shall be accompanied by a registration certificate and or any other documentary proof that the applicant is the complainant and an affidavit sworn by the complainant/agent in compliance with regulation 13 (2) (b).

FORM ACA 9

(r.13 (2) (c))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

INDEMNITY

I,..... (Full name) of P.O. Box do hereby, undertake to indemnify the Anti-Counterfeit Agency, its staff members and agents against any liability that may be incurred pursuant to seizure, removal or detention of any alleged counterfeit goods or any other action with or delivery of the goods, as described below, in terms of the Anti-Counterfeit Act, 2008 and any other written law and further undertake to cover any expenses that may be incurred in effecting the seizure, removal or detention of the goods and to pay any legal costs incurred by the Agency pursuant to the seizure, removal or detention of the goods and to pay and arrange for the removal of such goods to a place of storage, and to pay any storage costs, including any Agency's counterfeit depot rent as determined by the Executive Director and to arrange for and pay for the destruction of the goods if required.

Dated.....this.....dayof.....20.....,

at.....(place)

.....
Complainant

(Signature)

.....
(Designation)

Guarantors:

1. 2.
Guarantor *Guarantor*

Witnesses:

1. 2.
Witnesses *Witnesses*

(No wording is to be changed or altered in this indemnity)

Ref. No.

FORM ACA 10

(r.14 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

APPLICATION TO SEIZE AND DETAIN SUSPECT COUNTERFEIT GOODS

The Commissioner is hereby requested to seize and detain suspect counterfeit goods, the particulars of which are set out here below-

1.	Name of the owner of the intellectual property	
2.	Telephone number, postal and physical address of owner	
3.	Name of agent, if any	
4.	Telephone number, postal and physical address of agent	
5.	Description of suspected counterfeit goods	
6.	Place where the goods are situated or intended destination	
7.	Particulars of the consignment or packages	
8.	The means of transport where applicable	
9.	The identity of the importer, exporter, holder, distributor or manufacturer	
10.	Place where goods are produced, if known	
11.	Means of production where applicable	
12.	Description of the genuine goods or copyrighted works	
13.	Samples of the genuine products or copyrighted works	

Dated this day of, 20.....

Signature.....

COMPLAINANT/AGENT

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in triplicate.
3. This application shall be accompanied by registration certificate and or any other documentary proof that the applicant is the complainant and an affidavit sworn by the complainant/agent in compliance with regulation 14 (2) (b).

FORM ACA 11

(r.14 (2) (c))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

INDEMNITY

I,.....(full name) of P.O. Box

.....do hereby, undertake to indemnify the Customs Authority , its staff members and agents against any liability that may be incurred pursuant to seizure, removal or detention of any alleged counterfeit goods or any other action with or delivery of the goods, as described below, in terms of the Anti-Counterfeit Act, 2008 and any other written law and further undertake to cover any expenses that may be incurred in effecting the seizure, removal or detention of the goods and to pay any legal costs incurred by the Customs Authority pursuant to the seizure, removal or detention of the goods and to pay and arrange for the removal of such goods to a place of storage, and to pay any storage costs, including any Customs Authority's warehouses rent as determined by the Commissioner and to arrange for and pay for the destruction of the goods if required.

Dated.....this.....day of.....20.....,
at.....(place)

.....
Complainant

(Signature)

.....
(Designation)

Guarantors:

1. 2.
Guarantor Guarantor

Witnesses:

1. 2.
Witnesses Witnesses

(No wording is to be changed or altered in this Indemnity)

Ref. No.

FORM ACA 12

(r. 15 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

SUBMISSION OF PARTICULARS OF INTELLECTUAL PROPERTY RIGHT

The Executive Director,

The Anti-Counterfeit Agency

1.	Name of owner of the intellectual property	
2.	Telephone number, postal and physical address of owner	
3.	Name of agent, if any	
4.	Telephone number, postal and physical address of agent	
5.	Description of the intellectual property right	
6.	Description of goods	
7.	Samples of the goods or copyrighted works	
8.	Place where the goods are produced	
9.	Remarks	

Dated this day of, 20.....

Signature.....

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be accompanied by a certified copy of registration of the intellectual property right or information which furnishes evidence concerning authorship or creation.

FORM ACA 13

(r.15 (3)) & (r.23 (2))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

APPLICATION FOR SEARCH

The Executive Director,

The Anti-Counterfeit Agency

1.	Name of Applicant	
2.	Telephone number, postal and physical address of applicant	
3.	Name of owner	
4.	Telephone number, postal and physical address of owner	
5.	Name of agent, if any	
6.	Telephone number, postal and physical address of agent	
7.	Reason for the search	
8.	Remarks	

Dated this..... Day of, 20.....

Signature.....

APPLICANT

FORM ACA 14

(r. 16 (1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

RELEASE OF SEIZED GOODS

The goods described here below are hereby released to the person specified:

1.	Name of the owner of seized goods	
2.	Telephone number, postal and physical address of owner	
3.	Name of agent, if any	
4.	Telephone number, postal and physical address of agent	
5.	Reference number of the matter	
6.	Description of the goods	

7.	Quantity of goods seized	
8.	Quantity of goods used for testing or analysis	
9.	Quantity of goods released	
10.	Reason(s) for release	
11.	Remarks	

Dated this.....day of20.....

Signature.....

INSPECTOR

Received By:

Name..... Signature.....

Identity Number/Passport/Driving Licence
(Delete whichever is not applicable)

Date

Witness

Name and Signature

Date

Name.....

Signature.....Date:.....

DEPOT MANAGER

NOTES:

- 1 If space provided is not sufficient, please use a separate sheet of paper.
- 2 This form should be completed in quadruplicate. One copy to be issued to the owner/agent of the suspected goods, one copy to be delivered to the Counterfeit Goods Depot, one copy to be filed in the investigation file by the Inspector and one copy to be filed in the Agency's registry.

FORM ACA 15

(r.18)

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY, (full name of owner).....

.....
of (address).....

(hereinafter called "the owner") hereby nominates, constitutes and appoints (name of Attorney).....

of (address) (hereinafter called "the Agent"), to be the true and lawful agent of the owner with full power and authority for, and in the name of, and on behalf of the owner, to do or execute all or any of the acts and things

hereinafter mentioned, that is to.....

.....
Generally to do all such acts and things not herein specially authorised as the Agent may deem proper or expedient in relation to all or any of the purposes or matters aforesaid.

The owner hereby agrees to ratify all that the Agent shall do or cause to be done in execution of this deed. This power of attorney shall in all respects be interpreted in accordance with and governed by the laws of the Republic of Kenya.

Signed and sealed on this.....day.....of.....20.....,
at.....(place)

Full name Designation

Signature

Note.— This form shall be stamped in accordance with the provisions of the Stamp Duty Act......
(r .9 (2) (c), 10 (2), 11(2), 13 (2) (a), 14 (2) (a), 15 (3), 18, & 23 (2))**SECOND SCHEDULE**

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Agency

FEES

<i>Forms</i>	<i>Purpose</i>	<i>KSh.</i>
1. FORM ACA 3	Application for copies of statements per page additional fees for certification per document	50 1,000
2. FORM ACA 4	Application for inspection of seized goods	2,000
3. FORM ACA 5	Application for samples	5,000

4.	FORM ACA 8	Laying of a complaint	10,000
5.	FORM ACA 10	Application to the Commissioner to seize suspected counterfeit goods	10,000
6.	FORM ACA 13	Application for search	1,000
7.	FORM ACA 15	Power of Attorney	1,000

Dated the 26th July, 2010.

H. K. KOSGEY,
Minister for Industrialization.